The Solicitors' Journal

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Current Topics.

Mr. J. S. Henderson.

MR. JAMES SANDS HENDERSON, who died on 30th January at the age of seventy-four, was an occasional but highly valued contributor to these columns. His knowledge of Scots law enabled him to draw useful comparisons from time to time, and his learning on other subjects was also profound, as befitted a former editor of *The Times* reports and *Times Commercial Cases*. From 1913 to 1937 he worked as a reporter for the Council of Law Reporting in the King's Bench Division and the Court of Appeal, and from 1937 until a short time ago he was reporter for the Council in the House of Lords. He was also the editor of the sixth, seventh and eighth editions of "Carver's Carriage of Goods by Sea," as well as the nineteenth and twentieth editions of "Roscoe's Nisi Prius." His work and his cheerful personality will be missed by those who had the good fortune to know him.

Paper and Court Work.

LORD JUSTICE DU PARCQ made a forthright statement on 29th January on the subject of correspondence written on one side of the paper only. He said: "I shall make it a rule that, in future, no document not prepared in accordance with the injunction to save paper will be taken into account when costs are taxed. There is too much of this, and this is the only way to deal with it." The dread penalty of losing costs may well suffice to bring less economical solicitors to their senses, and, indeed, it is possible to sympathise heartily with a judge who has to witness day after day so many cases of omission to observe the elementary rules of paper-saving. The Law Society has performed a useful service in putting forward a few suggestions on the subject, and solicitors would do well to study them (*ante*, p. 29). It would be far wide of the mark to suggest that there are any cases of wilful refusal to save paper. Indeed, quite apart from the overriding national interest, if it is possible to think of anything apart from the national interest nowadays, the great majority of solicitors would welcome any practice innovation which would effect economies and which would be generally followed. Solicitors have rather conservative tendencies, and while many have already adopted the practice of single spacing and using both sides of the paper, not so many have resorted to the use of octavo-sized paper, so sensibly recommended by The Law Society. It may be permissible to suggest that as there are so many ways of saving paper, and as none of us can lay his hand on his heart and say that he wears "the white flower of a blameless life" in this respect, rules of court should be laid down so that solicitors may know definitely when they are running the risk of being deprived of their costs. This course would have the added advantage of making it authoritatively clear to all that wasting paper is a greater sin than even issuing a statement of claim which discloses no cause of action. A declaration by a particular judge as to a future course of action, valuable as it is in itself, has nothing like the weight of a new rule of court, ignorance of which can never possibly be any excuse.

War Damage Act, 1941: Proposed Amendments.

THAT there is already some demand for amendment of the War Damage Act, 1941, is apparent from a series of suggestions approved by the Administrative and Finance Committee of the National Federation of Property Owners on 4th December, 1941. These proposals, which were published in full in the *Property Owners' Gazette* for January include vital and far-reaching amendments. A particularly controversial matter is raised by the proposal that all mortgagees shall be made indirect contributors, and with respect to mortgages not included in the Act, the contribution by the mortgagee should be half the amount provided by s. 25 of the Act as applicable to single contributory properties, the provisions of subss. (4) and (5) to be amended accordingly. It may be recalled that as early as last July the differentiation between different classes of mortgagees was criticised as anomalous in an article in *The Modern Law Review* (85 SOL. J. 362). Any amendment in this direction would, in order to be completely equitable, have to be retrospective. It is also suggested that where a contributor has not had notice of a Sched. A assessment since 3rd September, 1939, he should have his contributory value adjusted to the correct Sched. A value as at the outbreak of war. There may, however, be serious administrative difficulties in the way of the adoption of this proposal. A further suggestion that the £5 claim limit should be reduced to £3 is open to the criticism that the limit must be to some extent arbitrary, and no doubt a £3 limit would also be criticised on the ground that it is too high. An interesting proposal is that in the event of total loss of mortgaged property the War Damage Commission should, if called upon by the mortgagor, meet the mortgage interest payments and deduct such payments from the ultimate compensation. This seems to be more of an expedient than a radical remedy. The root of the trouble, as was pointed out in the article in the July, 1941, issue of *The Modern Law Review*, referred to above, may be that the real content of the transaction in the ordinary building society mortgage of a dwelling-house is no longer that the mortgagor is the owner of the equity liable on a personal covenant for which the house is security, but an arrangement which both mortgagor and mortgagee look upon as an investment. It is also recommended that where a contributory property which is a dwelling-house is destroyed by enemy action and it is desired that it should be rebuilt by the contributor, and where such property before the damage did not infringe any of the provisions of the Housing and Town Planning Acts, the War Damage Commission should make a cost of works payment. This would go some way towards remedying the injustice caused by the difference between the compensation by means of a cost of works payment and that by means of a value payment, referred to in the article in *The Modern Law Review*. These, and a number of other proposals are to be put forward by a deputation from the Federation of Property Owners to the Chancellor of the Exchequer, who will, it is to be hoped, record them for consideration in the near future.

Cost of Works Payments.

A USEFUL explanatory pamphlet has been issued by the War Damage Commission (Form C.2.X) on claims for cost of works and temporary works payments in respect of houses, flats, tenements and office buildings. In non-technical language, it explains how form C.2 should be filled up. The pamphlet may also assist those who have received form C.6, which is issued when the damaged property is used solely for the purpose of trade or manufacture. It sets out the purpose of form C.2 and indicates the time allowed for the returning of the completed form. It also gives such necessary information as that claimants should not write to the Commission for permission or help to enable the work of repair to be put in hand, except in the special circumstances covered by s. 7 of the War Damage Act, 1941, under the general heading of "Public Interest." Where there is any doubt about the necessity for obtaining a licence under S.R. & O., 1941, No. 1596, from the Ministry of Works and Buildings, or any other Government department, before the work can be put in hand, inquiry may be made of the licensing officer of the Ministry of Works and Buildings. Claimants should make it clear, where necessary, that the work is required to prevent the damage being increased by weather or other similar causes. A separate letter will be necessary on each occasion of an instalment

payment during progress where such payments are approved, but form C.2 must be completed as soon as the work progresses far enough for it to be necessary to ask for a payment. With regard to progress payments, it is interesting to note a new decision by the War Damage Commission. Charges for professional fees, it has been decided (in accordance with the scale and conditions issued by the Commission), borne by the claimant, may be accepted as part of an instalment claim on the following basis: (*a*) In cases in which a firm contract is entered into for the whole of the work there will be admitted as part of the first instalment the actual fees already paid by the claimant up to an amount not exceeding two-thirds of the total estimated fee. The balance will normally be paid with the final instalment claim. In those special cases where the claim is a very large one, consideration will be given to the question of further advances on account of fees as part of intermediate instalments; (*b*) Where the work proceeds on the footing of a prime cost contract, with no firm basis on which to estimate the total amount of fees allowable, the permitted instalment in respect of fees will not exceed the appropriate scale percentage on the cost of works so far executed.

Civil Defence Employment.

CONSIDERABLE public interest has been aroused by the new Civil Defence (Employment and Offences) (No. 3) Order, 1942, made by the Minister of Home Security on 22nd January, 1942, in pursuance of powers conferred by regs. 29B and 38 of the Defence (General) Regulations. The order provides that persons of eighteen years of age or over who are employed without remuneration or are not continuously employed whole time in certain civil defence capacities are required to continue in their employment until their services are dispensed with by or on behalf of the local authority or a Regional Commissioner. The civil defence capacities specified are those of air-raid warden, of a member of a civil defence messenger service, decontamination service, first-aid party service, rescue service or stretcher party service, or in any capacity in which persons are employed at control or report centres. In the case of an air-raid warden in the service of a county borough or metropolitan borough in the London Civil Defence Region, the power to dispense with services is exercisable by the air-raid precautions controller, and by the sub-controller in the case of county districts in that region. Air-raid wardens in the service of the City of London may be dismissed by the Commissioner of City of London police. If any person employed as above receives a direction under reg. 58A of the Defence (General) Regulations, 1939 (requiring him to perform services elsewhere), and it is not reasonably practicable for him to continue to be employed as a civil defence worker for the authority employing him previously to the removal, the order does not apply to him as from the date when he removes. Paragraph 1A of reg. 29B of the Defence (General) Regulations, 1939 (relating to disobedience to lawful orders and absence from duty) apply to all persons to whom the order applies. A statement was issued by the Ministry of Home Security on 27th January with regard to the fears expressed in some quarters that if voluntary service were converted into compulsory service there would no longer be those conditions which would enable part-time workers to continue their normal occupations. It was said that from no part of the country had there been reported any rush of resignations and, on the whole, Mr. MORRISON'S appeal to refrain from hasty resignations had met with a good response. A circular issued to local authorities on 22nd January made it clear that hours of duty should be fixed with full regard to the obligations which most part-time civil defence workers have as employed persons or in domestic life, and that the service requirements should, wherever possible, be adjusted to meet the day to day responsibilities of the individual members. The general standard will be a maximum of forty-eight hours' duty in each period of four weeks, but authorities have been asked especially to take due account of personal circumstances, such as exceptional pressure of war work or domestic hardship. After the open period of two weeks during which resignations may be submitted, the statement continues, part-time members can apply for their services to be dispensed with. Although the order places some responsibility on the Regional Commissioner, the local authorities will be primarily concerned with its execution, and much will depend on their exercise of wise discretions.

New Defence Regulations.

A BATCH of amendments to the Defence Regulations made on 22nd January, 1942 (1942, S.R. & O., No. 92), contain several interesting new emergency laws. A new reg. 37A provides that all traffic signs, and not merely light signals as hitherto (s. 36, Road Traffic Act, 1934), shall be presumed to comply with the statutory requirements as to their authorised character and as to their being lawfully placed, until the contrary is proved. A new para. 4A of reg. 39 enables the Home Secretary to retire compulsorily on a life pension or gratuity any chief officer of police in a district where it seems expedient to do so, having regard to the conditions which may be expected to prevail. Provision is made so that no police officer shall suffer loss in computation of his pension or gratuity, if the Home Secretary thinks it is just that he should not, through early retirement. A further new reg. 51A provides that, without prejudice to the general powers in reg. 51, for the taking possession of land and the use thereof by a competent authority, those powers shall be exercisable by the Board of Trade for the purpose of working any coal in Great Britain, and any minerals found therewith. Such minerals on severance are to become the property of His Majesty. The regulation provides for the calculation of the rent in a coal-mining lease, in such a case, as if the minerals had been worked and carried away where the rent payable varies by reference to the amount of minerals carried away. It also provides for payment to persons entitled to work the minerals and for payment of the equivalent of royalties to the Coal Commission where the minerals are vested in the Commission and are not comprised in a coal-mining lease. There is also provision for compensation for damage to land, and for the amounts of compensation to be determined in cases of dispute by a single arbitrator, appointed, in default of agreement, by the Lord Chancellor, and an unsuccessful claimant may be awarded costs if this course is justified on the merits of the case. A further new reg. 56AAA provides that the Minister of Works and Buildings may, by order made as respects premises of any class situate in the United Kingdom, or in any part thereof, require the owners or occupiers of those premises to furnish specified particulars with regard to scrap metal on the premises. Subject to any exceptions in the order, metal is to be deemed to be suitable for scrap if it is or forms part of any building, structure, machinery, plant or article which is disused, obsolete or redundant, or is spare or otherwise serves no immediate purpose.

Registration of Former Aliens.

A LARGE number of persons will be affected by the new Registration (Former Aliens) Order, 1942 (S.R. & O., No. 117), which the Home Secretary made on 22nd January. The order applies to any person who, having possessed the nationality of any State with which His Majesty is for the time being at war, acquires or has since 31st December, 1932, acquired British nationality and attains or has attained the age of sixteen years. It does not apply to any such person so long as he is in the service of His Majesty, or to any person who has obtained a certificate of naturalisation under s. 10 (6) of the British Nationality and Status of Aliens Act, 1914, or any child of such person whose name is included on the certificate. A further class of persons to whom the order does not apply is comprised by those who have complied with the Registration (Former Aliens) Order, 1940, which the present order revokes. Further differences between the present order and the revoked order are that: (1) the persons to whom the order applies must now report to the nearest police station not later than fourteen days from the date of the order (22nd January) or from the date when the order first applied to him; (2) the former order applied to previous Austrian, German and Italian subjects who had attained the age of sixteen years and had acquired British nationality since 31st December, 1932. His Majesty is now at war with a number of additional States since 4th July, 1940, when the previous order was made, and the order is wide enough to cover further persons in the improbable case of the enemy obtaining fresh supporters.

Recent Decisions.

In *In re Drage's, Ltd.*, on 26th January (*The Times*, 27th January) BENNETT, J., held that a company which was formed to carry on a house-furnishing business, but which had ceased to trade and was engaged in collecting outstanding hire-purchase debts, could not be permitted to have its objects altered so as to enable it to carry on the business of an investment trust company, as that was not a business which could be advantageously combined with the principal object of the company, which was, in any case, not being carried out at the moment.

In *Herrmann* v. *Metropolitan Leather Co., Ltd.*, on 28th January (*The Times*, 30th January), UTHWATT, J., held that premises consisting of two separate buildings in the front and rear of a street and comprised in one lease were comprised in a "multiple lease," within s. 15 of the Landlord and Tenant (War Damage) Act, 1939, although they were used as a single factory and were connected by a gangway on the second floor. Part of the premises had been destroyed by enemy action, and his lordship held, on the facts, that it was equitable to allow the lessees to exercise their right of disclaimer in respect of the whole of the premises.

In *In re Amand*, on 30th January (*The Times*, 31st January) WROTTESLEY, CROOM-JOHNSON and CASSELS, JJ., held that, by reason of the Allied Forces Act, 1940, and the Allied Forces (Application of 23 and 24 Geo. 5, c. 6) (No. 1) Order, 1940, a royal decree of the Netherlands Government, and a summons issued under it, were valid by English law as well as by Dutch law, and that, therefore, a Dutch subject resident in England who disobeyed the summons and was arrested, was not entitled to a writ of *habeas corpus*.

A Conveyancer's Diary.

1941. Chancery V.

THIS week I conclude my review of the year 1941 with references to a few miscellaneous matters. It will be more convenient to exclude from this series the numerous cases on the Courts (Emergency Powers) Acts and to deal with that subject more comprehensively on some future occasion.

Re Thornhill's Settlement [1941] Ch. 24, is, I think, the only case in the reports under review which deals with the Settled Land Act. In 1906 certain land in Hampshire was settled upon one McCreagh as tenant for life with remainders over. The tenant for life had been twice bankrupt and had evidently allowed the lands to fall into a neglected condition. He had also refused to parly with the War Office, who had requisitioned part of them, or with one Patterson, who wanted to become tenant of two of the farms, and whom he apparently advised to enter as a squatter. In those circumstances the Public Trustee, as the trustee of the settlement, asked for an order under S.L.A., s. 24, to enable him to exercise the statutory powers of a tenant for life. That section enables such an intervention where the court is satisfied that " a tenant for life, who has by reason of bankruptcy, assignment, incumbrance or otherwise ceased in the opinion of the court to have a substantial interest in his estate or interest in the settled land or any part thereof, has unreasonably refused to exercise any of the powers conferred on him by this Act." It was clear that McCreagh had fulfilled the qualification as to bankruptcy. But had he also acted unreasonably? Bennett, J., whose judgment was approved without comment by the Court of Appeal, held that the mere fact of letting the land get into a bad state was no ground for exercising the jurisdiction, and that he had to be satisfied by evidence of an unreasonable refusal to exercise the life-tenant powers. The learned judge then reviewed the evidence and held that in his dealings (or lack of them) with Mr. Patterson and the War Office the tenant for life had acted unreasonably. He therefore made an order enabling the trustee of the settlement to exercise any of the powers of sale of a tenant for life in relation to any part of the land which was requisitioned by the War Office, and, in respect of any part of the land, the powers of leasing and the powers ancillary thereto. He also made various consequential orders. The interest of the case lies mainly in the fact that the learned judge and the Court of Appeal clearly took a restrictive view of the section, in that, in a very strong case, they insisted on full proof of unreasonable refusal and limited the order to very little more than was necessary to put right the specific matters complained of. It should be noted that subs. (2) of the section makes it impossible for a tenant for life, while such an order is in force, to exercise any of the powers which the trustee is allowed to exercise under the order. The learned editors of " Wolstenholme " point out in a note on subs. (1) that such an order should be registered under s. 6 of the Land Charges Act as an order affecting land. Such a registration has, of course, to be reviewed every five years.

Re Pollock [1941] Ch. 219, develops the rule under which those who feloniously cause the death of a person cannot benefit from such death. The general principle is, of course, clear, and was fully discussed in this column two years ago. There have been, however, two practical points which were not fully settled. First, what was the position where the murderer was not himself sane? This matter is of considerable importance, as the ordinary way for one of these cases to arise is that one spouse kills the other and then commits suicide. Now, in such a case, it is difficult to say what would have happened if the murderer had lived to stand his trial, and the matter is almost invariably complicated by the compassionate habit of coroners' juries in returning a verdict that A, while of unsound mind, killed B and then committed suicide. The second point is how the rule of public policy affects the operation of the statute regarding the distribution of the estates of intestates where the victim was intestate. Joyce, J., in *Re Houghton* [1915] 2 Ch. 173, expressed the view that a judge-made rule of public policy could not affect a statutory direction to deal with the estate in a certain way. The next case was *Re Pitts* [1931] 1 Ch. 546, where Farwell, J., on full evidence, held as a fact that he who had done the killing had been insane. As he was therefore neither guilty of murder nor a felon, the rule did not apply at all; Farwell, J., did, however, express the view, *obiter*, that the remarks of Joyce, J., were not correct. In *Re Sigsworth* [1935] Ch. 89, Clauson, J., declined to admit as evidence of what had occurred the findings of the coroner's jury, and also said that he had not enough evidence to decide what had occurred. He said that he would try to help the personal representative of the victim by dealing with the hypothetical question what would happen if the slayer had in fact killed the victim feloniously and had then committed *felo de se*. On this point he stated that he agreed that Joyce, J., had been wrong, but went on to say that there was a question whether the consequence would be that the estate was distributable as if the name of the slayer had been struck out of the list of persons who were qualified beneficiaries under the Administration of Estates Act, so that the fund would go over to those next entitled, or whether the Act would carry the estate to the slayer, but that the general law would prevent him from actually grasping it, so that it would go to the Crown as *bona vacantia*. He declined to answer this question in the absence of the Attorney-General, whom he gave leave to join. The case does not appear in the reports again and I do not know what was actually done. In *Re Pollock* the evidence before Farwell, J., showed that the husband had shot the wife and then himself. There was some evidence that he was in a depressed state of mind, but nothing approaching evidence of insanity. The coroner's jury had arrived at its usual verdict. Farwell, J., refused to receive this verdict in evidence at all, and one must respectfully say that he was clearly right, having regard to *Bird* v. *Keep* [1918] 2 K.B. 692, a decision of the Court of Appeal. We may, I think, take that point as permanently disposed of. Farwell, J., did not, however, stop where Clauson, J., had done in *Re Sigsworth*, but said that if the personal representative of the victim shows that the slayer has killed the victim, the slaying must be treated as having been felonious unless the person interested in so doing can show " by evidence that the act was not felonious but was done under a condition of mind which rendered it not criminal at all." He refused to consider himself bound in such a matter by the presumption of innocence which the criminal law gives to a person indicted. He therefore declared that " on the evidence before me " the victim's residue (which her will had given absolutely to the slayer) " did not pass under her will to " the slayer " and that she died intestate " in respect of it. This declaration would, of course, protect the personal representative in acting upon it, but would not prevent the adducing of any evidence thereafter to show that the slayer had been insane.

The decision of Farwell, J., is a very helpful one, and solves nearly all the outstanding questions. There is, however, one exception. Farwell, J., held that the victim's will did not operate to carry anything to the slayer, and that as the slayer was the residuary donee, the victim was intestate as to residue. But the slayer was her husband and was therefore one of the persons entitled on her intestacy. The reported arguments and decision do not touch on the question propounded by Clauson, J., in *Re Sigsworth* as to the possibility of the slayer's share on intestacy going to the Crown. So long as this point is unsettled the law cannot be said to have been finally clarified.

Of the four cases in 1941 on charities, two, *Re Diplock* [1941] Ch. 253, and *Re Ward* [1941] Ch. 308, deal with the notorious point about the validity of a gift for " charitable *or* benevolent purposes " and require no further treatment at the moment. *Re Mylne* [1941] Ch. 204, shows the limits of *Re Blaiberg* [1940] Ch. 385. In the latter case it had been held that a provision for defeasance upon the beneficiary taking a certain attitude to his religious faith could not operate, since no one could ever tell when the defeasance had in fact arisen. Conversely, in *Re Mylne* the gift was for the trustees to benefit certain persons who held certain religious views. Farwell, J., decided that such a gift was distinguishable from a clause of defeasance, since the latter had to be construed strictly, while in *Re Mylne*, if the trustees fell into error in an honest endeavour to advise themselves of the views of prospective beneficiaries, there would be no one in a position to complain.

Finally, we have *Re Corbyn* [1941] Ch. 400, where the gift was of a fund to be used for training selected boys from the training ship " Exmouth " to be officers in the Royal Navy or Merchant Navy at the candidate's option, and to provide them with allowances to keep up the position of officers and gentlemen until their pay was enough to do so. Morton, J., held that this was a good charitable gift so far as the training was concerned as being a trust for higher education. It was not " the setting out of soldiers," since that term, though applicable to the Royal Navy, was inapplicable to the Merchant Navy. So far as concerned the granting of allowances, it was charitable as being a trust for purposes beneficial to the community at large, since it would enable poor boys to become officers at sea. " The mercantile marine is essential to the community in the present time of war, but at all times, unless and until this country can produce within its borders all the food and other essentials of life which it requires, the mercantile marine must be kept in existence, and it is of the greatest importance that boys should be suitably and efficiently trained to be its officers. [The trust for allowances] may meet the difficulty confronting a boy whose parents are poor who might be prevented from following the career in question by reason of the lack of any means over and above his pay."

The Minister of Works has been given powers, under a new Defence Regulation, to make an order calling upon owners and occupiers of specified categories of premises, to disclose any metal suitable for scrap which is on those premises at a specified date. An order is now being drafted which will provide for compulsory returns to be made of all disused machinery, plant and other types of unwanted metal. The terms of the order will necessarily be widely drawn, but the Minister wishes to make it clear that there is no intention to take for scrap valuable machinery and plant which must be preserved for use after the war. In particular, machinery and plant belonging to firms that have closed down under concentration schemes approved by the Board of Trade will not be requisitioned, nor will a return from these firms be requested.

Landlord and Tenant Notebook.

War Damage: A "Multiple Lease" Case.

Herrmann v. *Metropolitan Leather Co., Ltd.*, reported in *The Times* of 30th January, is, I believe, the first recorded decision on a question whether property was held on a "multiple lease," as defined in the Landlord and Tenant (War Damage) Act, 1939. The statute made special provision for "multiple leases" and "ground leases," judicial discretion and "whether it is equitable" characterising the machinery in each case. Ground leases have since been assimilated to other leases, by the 1941 Act; the latter also modifies the provisions affecting multiple leases, but the amendments (discussed in the "Notebook" on 27th September last: 85 SOL. J. 390) are largely consequential on the innovation of "conditional notices of retention," itself a consequence of certain provisions of the War Damage Act, 1941, and the definition is not changed.

That definition, contained in s. 24 (not in s. 15, as the present report of judgment in *Herrmann* v. *Metropolitan Leather Co., Ltd.*, says), runs: "'multiple lease' means a lease comprising buildings which are used or adapted for use as two or more separate tenements." Criticism has been levelled at the use of the plural in case of "buildings"—it can hardly have been the intention not to apply the special provisions to a single block of flats, say—but this point did not arise in the recent case, the facts of which show that, though the premises concerned may have had one postal address, there were separate buildings.

There had, indeed, at one time been separate leases of the parts, presumably to the same lessee, the respondents in the case; for the report speaks of a "consolidated lease" entered into in 1937 and due to expire in 1950. The two parts consisted of "front premises" connected by a gangway on the second floor with a three-storey building, which included a boiler-house. The tenants were manufacturers of leather goods, and it may be that the boiler-house was of no use to them. At all events, when the front premises were destroyed by enemy action, and the applicants had "refused to accept" notice of disclaimer, they tried to carry on their business in the back premises but found it impossible; they went as far as to look for and take other premises but, the nearest being two miles away, the experiment was not a success.

So when the applicants took out the summons to determine whether the lease was a "multiple lease," and claimed that the respondents were not entitled to disclaim it, the first answer was that they had adapted it for use as a single factory.

This point failed, Uthwatt, J., holding that all that the definition demanded was that there should be buildings reasonably capable of being used as separate buildings. This interpretation may prove to be of some importance some day. It may well be suggested that it reads more into the enactment than should be so read. It seems clear that the definition contemplated cases in which separate but self-contained buildings (to borrow an expression from the Rent Acts) have been let by one lease, and also cases in which premises had been sub-divided and the sub-divisions sub-let; but here was a case in which the action of the tenant, not that of the landlord, had made separate properties no longer individually self-contained.

However, if a lease is a multiple lease, the court has to consider, by virtue of s. 15 (3), whether, having regard to the extent of the war damage suffered by the land comprised in the lease as a whole, and all the circumstances of the case, it is equitable to allow the lease to be wholly disclaimed; and in an apt case may order, by subs. (4), the lease to be treated as two (or more) leases, allowing disclaimer of part of the property and giving consequential directions for apportionment and the like. And on this point the learned judge, having observed upon the respondents' efforts to carry on, said that he was satisfied that the plan was commercially impracticable, and held that it was therefore equitable to allow them to disclaim the whole.

Rent Restrictions: A "Payments for Attendance" Case.

Feigenbaum v. *Sutcliffe* (1942), 86 SOL. J. 27, is the first decision on the meaning of the first proviso to s. 12 (2) of the Increase of Rent, etc., Act, 1920 (amended by s. 10 (1) of the 1923 Act), which we have had for a long time. The proviso excluded any dwelling-house "*bona fide* let at a rent which includes payments in respect of board, attendance, or use of furniture"; the amending provision,—the occasion for which was frustration of the objects by means of what came to be known as "Rent Act lino"—enacts that "a dwelling-house shall not be deemed to be *bona fide* let at a rent which includes payments in respect of attendance or the use of furniture [it says nothing about board] unless the amount of rent which is fairly attributable to the attendance or the use of the furniture, regard being had to the value of the same to the tenant, forms a substantial portion of the whole rent."

The recent case turned on the question whether an undertaking by the landlord to provide coal was "attendance." The tenancy was clearly an unusual one; grantees of fully furnished premises often find coal to be "an extra," and here we had premises let unfurnished (or, at all events, the furniture was held to be "trivial") at a rent, including the supply of coal.

The most recent case on the proviso was, I think, *Michael* v. *Phillips* [1924] 1 K.B. 16 (C.A.), in which the landlords failed because the lease made no mention of the attendance and furniture provided; but more in point would be *Nye* v. *Davis* [1922] 2 K.B. 56, in which a covenant to carry coals to a flat every day, and to remove refuse, was held to satisfy the words. In *King* v. *Millen* [1911] 1 K.B. 647, this decision was distinguished: the landlord relied on an undertaking to clean the common hall and staircase in a sub-divided house, and it was held that there must be something in the nature of personal attendance for the exception to apply. Then, in *Wood* v. *Carwardine* [1923] 2 K.B. 185, McCardie, J., rejecting a contention that the supply of hot water through a pipe satisfied the proviso, said that the "attendance" must be "actual personal attendance by the landlord's servants or agents having actual corporeal existence."

In *Feigenbaum* v. *Sutcliffe* the agreement relied on was expressed in the tenancy, coals were to be carried, they were to be carried to the premises, and no doubt some corporeal agent would do the carrying. But the Court of Appeal, allowing the tenant's appeal, said it was impossible to hold that the *supplying* of a commodity, as distinct from the mere carrying of it on the premises, was attendance.

Our County Court Letter.

Motorist and Straying Bull.

IN *Adcock* v. *Popple*, recently heard at Spalding County Court, the claim was for £20 as damages for negligence. The plaintiff's case was that on the night of Saturday, the 16th August, he was driving his car when a bull, the property of the defendant, charged into the radiator. Damage was caused to the extent of £20. The plaintiff had regulation lights, and was driving at a speed compatible with his range of vision. On being interviewed next day, the defendant had stated that all his animals had spent the night in the yard. Further search, however, revealed the presence of a bull, with a broken horn and its head covered with congealed blood. This was identified by the plaintiff as the bull which had damaged his car. Cross-examination was directed to show that the plaintiff had first alleged that the damage had been caused by a bullock, and not by a bull. Moreover, the animals of other people had been straying on the night in question. No evidence was called for the defendant, on whose behalf a submission was made that, even if the animal was proved to have been his, its mere presence on the highway was no proof of negligence. His Honour Judge Langman was satisfied that the defendant's animal had done the damage. In some cases a bull was regarded as a domestic animal, not dangerous to human beings. No dangerous propensity on the part of the bull had been proved, and there was no obligation on the defendant to keep it fastened up. The allegation of negligence failed, and judgment was given for the defendant, with costs.

Contract for Sale of Mangolds.

IN a recent case at Stratford-on-Avon County Court (*Righton* v. *Gadsby*) the claim was for £40 as the price of a bull, less an amount to be set off for mangolds. The claim was admitted, and the defendant's evidence on the set-off was that in January he quoted £2 a ton, but the plaintiff only offered 30s. The matter then dropped, but the plaintiff was subsequently found loading up mangolds in the defendant's field. The plaintiff explained that he had been offered mangolds elsewhere at 25s. a ton, and the defendant's case was that (1) this mention of a ton showed that this was to be the measure of the amount, as was customary; (2) the plaintiff would not have appeared with a cart unless in pursuance of an existing contract, under which he had accepted the defendant's price. The case for the plaintiff was that he had agreed to buy the mangolds by the heap or load, and not by the ton. He took nine loads, bought fair and square by the heap, and their value was £16. If he had known he was to be charged 40s. he would not have parted with the bull. His Honour Judge Kennedy, K.C., held that 35s. a ton was a reasonable price. After setting off the amount due to the defendant on this basis, judgment was given for the plaintiff for £19 3s. 6d., with costs.

The Quality of Carpets.

IN *H. W. Peak, Ltd.* v. *Pilgrim*, recently heard at Cambridge County Court, the claim was for £10 7s. as damages for refusal to accept delivery of a carpet. The latter had been ordered by the defendant, who inspected the work while in progress and complained of the seams not being properly finished off. This allegation was denied by the plaintiffs, whose seamstress gave evidence that the carpet was satisfactorily made. The defendant's case was that it would be impossible to alter the carpet so as to make a good job of it. Having inspected the carpet, His Honour Judge Lawson Campbell accepted the defendant's contention that alterations to the seams would weaken the fabric, thereby probably shortening the life of the carpet. Judgment was given for the defendant, with costs. It is to be noted that, if the plaintiffs had sued for the price of the carpet, they would probably have been non-suited, as the property in the carpet had not passed.

To-day and Yesterday.

LEGAL CALENDAR.

2 February.—On the 2nd February, 1734, "being Candlemas Day, there was a grand entertainment at the Inner Temple Hall for the Judges, Serjeants at Law, etc. The Prince of Wales was there, incognito, the Lord Chancellor, the Earl of Macclesfield, the Bishop of Bangor and several persons of quality. Mr. Baker was Master of the Ceremonies and received all the company. At night there was a comedy acted by the company of His Majesty's Revels from the theatre in the Haymarket, called 'Love for Love,' and the Societies of the Temple presented the comedians with £50. The ancient ceremony of the Judges, etc., 'dancing round our coal fire' and singing an old French song was performed with great decency."

3 February.—On the 3rd February, 1844, Charles Mathews, the actor, was examined in the Court of Bankruptcy. "On his schedule there appeared one hundred creditors and debts to the amount of £8,111, including £4,000 debts renewed after his last bankruptcy. The protection of the court had stayed thirty actions. He stated the weekly salary of himself and his wife, Madame Vestris, at £60. He proposed to retain £10 for personal expenses, £10 for wardrobe expenses, £5 for a carriage and £5 for servants at the theatre, in all £30 a week, giving up £30 a week to his creditors, which Sir C. F. Williams, the Judge, thought a liberal offer." Thus, at the height of his fame, this great comedian was nevertheless in financial straits. He had already been in the Queen's Bench prison for debt, yet his brilliant dramatic career went on. Within three days of the proceedings in the Court of Bankruptcy he was making a splendid success of the part of Sir Charles Coldstream in "Used Up."

4 February.—On the 4th February, 1693, Evelyn wrote: "After five days' trial and extraordinary contest the Lord Mohun was acquitted by the Lords of the murder of Montford, the player, notwithstanding the Judges, from the pregnant witnesses of the fact, had declared him guilty; but whether in commiseration of his youth, being not eighteen years old, though exceeding dissolute, or upon whatever other reason, the King himself present some part of the trial and satisfied, as they report, that he was culpable, sixty-nine acquitted him, only fourteen condemned him."

5 February.—When William Palmer, the Rugeley poisoner, was charged with the murder of his friend John Parsons Cook, and also of his wife and his brother, the local excitement was intense, for it was commonly reported that he had murdered several other persons. Accordingly, the authorities deemed it inadvisable that he should be tried at Stafford, and on the 5th February, 1856, the Lord Chancellor introduced into the House of Lords a Bill empowering the Queen's Bench to order certain offenders to be tried at the Central Criminal Court. This became law, and Palmer stood his trial in London, the Attorney-General prosecuting. He was convicted of the murder of Cook and hanged.

6 February.—On the 6th February, 1749, "near thirty persons of the Stafford rioters appeared at the Court of King's Bench to receive judgment and in consideration of their humble submission to be found guilty, before made at their trial, and acknowledgment of their offence, the court only set a fine of 6s. 6d. on each person and no bail, though moved for by the Attorney-General, was given for their good behaviour." The riot had occurred in the course of an exciting election when Mr. William Chetwynd was returned as one of the members for the borough and a mob of the opposing faction had broken into his house and sacked it.

7 February.—In 1584 Stow records: "The 7th February. John Fenn, George Haddock, John Munden, John Nutter and Thomas Hemerford were all five found guilty of high treason in being made priests beyond the seas and by the Pope's authority since a statute made in anno primo of Her Majesty's reign and had judgment to be hanged, bowelled and quartered." All were executed. They had been brought from the Tower of London to Westminster Hall for their trial. When they had received sentence of death they all joined together in reciting the *Te Deum laudamus*, showing extraordinary joy at receiving the grace of martyrdom.

8 February.—William Spiggot and Thomas Phillips were hanged at Tyburn on the 8th February, 1723, for a highway robbery committed on Finchley Common, but they nearly came to a much more painful end, for when they appeared at the Old Bailey they at first refused to plead. In accordance with the law at that time they were sentenced to be taken back to prison, put in a mean room stopped from the light, laid supine on the bare ground without any garment and fastened with their arms and legs spread out. After that there was to be laid on each "as much iron or stone as he can bear and more." The sentence went on: "And the first day after, he shall have three morsels of barley bread without any drink and the second day he shall be allowed to drink as much as he can at those times of the water that is next the prison door, except running water, without any bread and this shall be his diet till he dies." This, of course, amounted to a sentence of pressing to death. Phillips consented to plead as soon as he reached the press room, but Spiggot bore the weight of 350 lbs. for half an hour, and only when 50 lbs. were added gave way. Both were then tried and convicted.

Obituary.

MR. J. S. HENDERSON.

Mr. James Sands Henderson, barrister-at-law, died on Friday, 30th January, aged seventy-four. Mr. Henderson was called by the Middle Temple in 1891, and was a valued contributor to this Journal. An appreciation appears on p. 37 of this issue.

MR. A. W. B. WELFORD.

Mr. Alfred William Baker Welford, barrister-at-law, died on Sunday, 1st February, aged seventy. Mr. Welford was called by Lincoln's Inn in 1898.

MR. T. M. BARLOW.

Mr. Thomas M. Barlow, solicitor, of Cardiff, died recently aged seventy-seven. Mr. Barlow was admitted in 1888, and was secretary of the Welsh Golfing Union.

MR. F. LINTON.

Mr. Frederick Linton, solicitor, of Messrs. Woodcock, Stobart and Co., solicitors, of Wigan, died recently aged sixty-five. He was admitted in 1899.

MR. C. T. HILL.

Mr. Charles Thomas Hill, solicitor, of Messrs. Head & Hill, solicitors, of 3 Raymond Buildings, Gray's Inn, W.C.1, died on Thursday, 29th January. Mr. Hill was admitted in 1882

War Legislation.

STATUTORY RULES AND ORDERS, 1941 AND 1942.

No. 95. **Aliens** Order in Council, Jan. 22.
No. 128/L.2. **Chancery of Lancaster** (Court Fees) Order, Jan. 1.
E.P. 123. **Civil Defence** (Employment and Offences) (No. 3) Order, Jan. 22.
E.P. 149. **Control of Paper** (No. 36) Order, 1941. Direction No. 4, Jan. 27.
No. 66. **Customs.** Additional Import Duties (No. 1) Order, Jan. 23.
No. 67. Customs. Additional Import Duties (No. 2) Order, Jan. 25.
No. 68. Customs. Export of Goods (Control) (No. 4) Order, Jan. 20.
E.P. 93. **Defence** (Armed Forces) Regs., 1939. Order in Council, Jan. 22, amending reg. 5, and adding reg. 12, and a Schedule.
E.P. 94. Defence (Companies) Regs., 1940. Amendment Order in Council, Jan. 22.
E.P. 92. Defence (General) Regs., 1939. Order in Council, Jan. 22, amending regs. 29B, 29BA, 32A and 39, and adding regs. 2BA, 31BA, 37A, 51A, 56AAA and 84B.
E.P. 135. **Display of Photographs** (Cinematograph Film Industry) Order, Jan. 26.
E.P. 100. **Employment of Women** (Control of Engagement) Order, Jan. 22.
E.P. 131. **Essential Work** (Iron and Steel Industry) Order, Jan. 22.
E.P. 132. Essential Work (Recall to Civil Defence) Order, Jan. 15.
E.P. 120. **Finance.** Acquisition of Securities (No. 1) Order, Jan. 26.
E.P. 121. Finance. Acquisition of Securities (No. 2) Order, Jan. 26.
E.P. 119. Finance. Securities (Restrictions and Returns) (No. 1) Order, Jan. 26.
E.P. 130. **Food** (Points Rationing) Order, 1941. Amendment Order, Jan. 24, and revocation of Gen. Licence, Dec. 16.
E.P. 129. Food (Points Rationing) Order, 1941. Gen. Licence, Jan. 24.
No. 1111. **Foreign Jurisdiction.** Northern Rhodesia (Legislative Council) Amendment Order in Council, Feb. 28.
E.P. 91. **Home Guard.** Order in Council, Jan. 22, amending the Defence (Local Defence Volunteers) Regs., 1940.
No. 102. **Merchant Shipping** (Fire Appliances) Rules, Jan. 6.
No. 125. **National Fire Service** (General) (No. 2) Regs., Jan. 22.
E.P. 124. **Police** (Employment and Offences) Order, Jan. 22.
No. 138/S.4. Police (Scotland) Regs., Jan. 14.
No. 139/S.5. Police (Women) (Scotland) Regs., Jan. 14.
No. 141. **Prize Courts.** British Honduras Prize Court (Fees) Order in Council, Jan. 22.
E.P. 117. **Registration** (Former Aliens) Order, Jan. 22.
No. 97. **Relief from Double Excess Profits Tax** (Southern Rhodesia) Declaration, 1942. Order in Council, Jan. 22.
No. 98. **Reprisals.** Order in Council, Jan. 22, applying Orders in Council for Restricting the Commerce of Finland, Hungary, Roumania and Bulgaria.
E.P. 111. **Tea** (Rationing) Order, 1940. Amendment Order, Jan. 21.
No. 2150. **Windward Islands.** St. Vincent (Legislative Council) (Amendment) Order in Council, April 4.
No. 99. **Weights and Measures** (Verification and Stamping Fees) Order in Council, Jan. 22.

WAR OFFICE.

Defence (General) Regs., 1939. Persons detained under reg. 18B. Instructions *re* pay and other benefits from Army Funds (Special Army Order 3), Jan. 9.

Notes of Cases.

KING'S BENCH DIVISION.

Bertani (L.) & Co., Ltd. *v.* **Hackney Borough Council.**

Viscount Caldecote, C.J., Humphreys and Lewis, JJ. 14th November, 1941.

Compulsory acquisition of land—Extension of lease under verbal agreement—Consideration tenant's compliance with dangerous-structure notices—Whether expenditure part performance rendering written agreement unnecessary.

Special case stated by an official arbitrator under s. 6 of the Acquisition of Land (Assessment of Compensation) Act, 1919.

The claimant was the lessee at all material times of premises in Hackney, the lease of which expired in August, 1941. The freehold of the property was in the hands of trustees, one of whom, one Roberts, in March, 1936, entered into a verbal agreement with the claimant for the extension of the lease for seven years from 15th August, 1941, at an increased rent of £50 a year, in consideration that the claimant's firm would comply with certain dangerous-structure notices. The firm did so at a cost of some £300. Hackney Borough Council having moved to acquire the premises compulsorily, the claimant claimed to be compensated on the footing that he was entitled to a lease for the extra seven years extending to August, 1948. The arbitrator had before him a letter, dated the 28th March, 1939, from the only surviving trustee acknowledging that he had agreed verbally to extend the claimant's lease for seven years at an increase in rent of £50. The question for the court was whether the claimant was to be compensated as for a lease extending to August, 1948, or for one expiring in August, 1941.

Lewis, J., giving the judgment of the court, said that it had been argued for the claimant, first, that if this was a case to which the Law of Property Act, 1925, applied, there was abundant evidence of part performance to take it out of s. 40, which, reproducing the material section of the Statute of Frauds, required the agreement to be in writing. Part performance was said to be constituted by the claimant's compliance with the dangerous-structure notices. It was further argued that, apart from the Act, the arbitrator had found as a fact, in proceedings not between vendor and purchaser or landlord and tenant, that the tenant was entitled to a lease. It was argued for the borough council that there was no question of part performance here, the alleged consideration for the agreement being no consideration at all, because it was incumbent *vis-a-vis* the landlord on the claimant, as tenant of the premises under a repairing lease, to comply with the dangerous-structure notices. He further argued that the finding of the arbitrator that the trustee agreed to the extended lease in consideration of the claimant's complying with the dangerous-structure notices was not a decision that the £300 was necessarily paid as consideration for the agreement in the legal sense. In the opinion of the court it was not permissible to go behind that statement in terms by the arbitrator that the consideration for the agreement was the tenant's complying with the notices and that that had been done, or to say that the tenant's expenditure of £300 might have been equivocal. The principle laid down by the Master of the Rolls in *Frame* v. *Dawson* (1807), 14 Ves. Jun. 386, at p. 388, "that the act must be of such a nature that, if stated, it would of itself infer the existence of some agreement; and then parol evidence is admitted to show what the agreement is," did not apply to a case in which the court of first instance, to use that expression of an arbitrator, had come to the conclusion that both parties had agreed that the payment was made under the agreement between them and for no other reason. The court must therefore hold that the payment of £300 was unequivocal and the consideration for the agreement. The acquiring authority were bound by that finding, and the claimant must be compensated on the footing that he was entitled to the extended lease.

Counsel: *H. B. Williams; Erskine Simes.*

Solicitors: *Gerrish & Foster; William Charles Crocker.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

RAILWAY AND CANAL COMMISSION.

London Passenger Transport Board *v.* **Railway Assessment Authority; London County Council** *v.* **Same.**

Wrottesley, J., Sir Francis Taylor and Sir Francis Dunnell. 16th September, 1941.

Rating and valuation—Transport undertaking—Assessment of net annual value—Sums to be included in or excluded from receipts.

Appeals by the London Passenger Transport Board and the London County Council against the first London Passenger Transport valuation roll completed on the 20th September, 1940, by the Railway Assessment Authority.

The authority, having placed the average net receipts of the board for the two accounting years ending the 1st July, 1933 and 1934, at £3,108,004, the board contended, on appeal, that they should not be assessed at more than £2,692,346, and they disputed the figure of £1,594,000 found by the authority to represent the net annual value of their transport undertaking, contending that it should not exceed £400,000. The London County Council appealed on the ground that the figure of £1,594,000 was too low. *Cur. adv. vult.*

Wrottesley, J., reading the judgment of the court, referred to *London Midland and Scottish Railway Co.* v. *Anglo-Scottish Railways Assessment Authority*, 50 T.L.R. 130, and said that the sums paid to the board under the Development (Loan, Guarantees, and Grants) Act, 1929, should be excluded in computing the total revenue receipts of the board. The London County Council claimed that the £273,156 paid as grants under the Act of 1929 should be included as a revenue receipt of the board because it was revenue from the transport undertaking within s. 4 (3) of the London Passenger Transport (Valuation for Rating) Scheme, 1935 (which is an adaptation to the board of the Railways (Valuation for Rating) Act, 1930), since it was money advanced for the transport undertaking, it being the duty of the court under that subsection to ascertain first the total revenue receipts of the board for the material years. In the opinion of the court, however, the grants were received by the board not from their transport undertaking but from the Government in respect of that undertaking. The authority next claimed that £20,000 received by the board under licences covering the use of bookstalls and similar premises on their stations should be included as a receipt from the board's transport undertaking. The licensees were granted exclusive use of bookstalls, and the exclusive privilege of exhibiting books, periodicals, etc., for loan or sale. Bookstall staffs had to wear an approved uniform, and the board provided the licensees with free carriage (valued at £4,000 a year) for their goods and staff. As rent, the licensees paid the board a percentage of their sales and commissions received from advertisements. The so-called rents were clearly much more than that; they conferred monopoly rights on the licensees. The authority had to establish that those sums were revenue receipts from the transport undertaking and not receipts arising from a hereditament not a transport hereditament occupied by the board. In the opinion of the court, these receipts were, generally speaking, receipts from the transport undertaking. Such receipts were not confined to fares or other purely railway receipts: see *Newcastle Corporation* v. *London & North Eastern Railway Co.* [1936] 1 K.B. 253; [1937] A.C. 275; (H.L.) 80 Sol. J. 931. His lordship, having turned to the calculation of the board's net average receipts for the two relevant years, held on the facts that £415,000 was a proper deduction in respect of renewals, and said that, the ascertained net receipts of the board amounting to £2,692,436, the court's next task under the scheme of 1935 was the estimation by reference to that figure of the rent at which the board's transport hereditaments might reasonably be expected to let as a whole on the assumptions set out in s. 4 (i) (*b*) of the scheme. First, logically, came determination of the assets to be provided by the tenant rather than the landlord, for the sum total of the physical undertaking was to be divided up into the property of the landlord, the subject of rent, and the property of the tenant, not so subject. The parties were agreed that tenant's capital included rolling stock of all kinds, except that part of it used, not for traffic, but in repairing the landlord's property. One assumption on which the calculation of the hypothetical rent was to be based was that the tenant undertook repairs necessary to maintain the hereditament in a condition to command the rent. On that, the board argued that the scope of tenant's chattels should be extended to include vehicles and plant required for such repairs. The court was satisfied that such vehicles might well be found in the possession of the landlord and put by him at the disposal of the tenant for a payment. The signalling apparatus belonged to landlord's capital: see *In re Southern Railway Co.* (1935), 21 T.L.R. 415, and *per* Lord Sumner and Lord Parmoor in *Lancashire & Yorkshire Railway Co.* v. *Liverpool Corporation* [1915] A.C. 152; 58 Sol. J. 653. As for plant and machinery in the board's workshops, the board relied on *Reg.* v. *Lee* (*Inhabitants*) (1866), L.R. 1 Q.B. 241, and the authority on *Tyne Boiler Works Co.* v. *Longbenton Overseers* (1886), 18 Q.B.D. 81. Regarding the rent as one for the concern as a whole, the court had no doubt that the plant was essential for the working of the railway, intended to remain permanently attached, and so part of landlord's capital; so also signs and recording clocks, heating and lighting apparatus, and electrical heating installations unless portable. His lordship, having considered such questions as depreciation and obsolescence with a view to arriving at the cost to the hypothetical tenant of the things to be provided by him, concluded that a fair division as between tenant and landlord of the average net receipts for the material years was reached by fixing the rent or net annual value of the transport undertaking at £945,270. His lordship concluded by observing that the twenty-two days occupied by the hearing of the appeals might in present circumstances be considered extravagant in time and money.

Counsel: *Comyns Carr*, K.C., *Tylor* and *Squibb*; *Pritt*, K.C., *Healy*, K.C., and *H. B. Williams*; *Craig Henderson*, K.C., *Turner*, K.C., and *Simes.*

Solicitors: *A. H. Grainger*; *J. R. Howard Roberts*; *Torr & Co.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Parliamentary News.

PROGRESS OF BILLS.

HOUSE OF LORDS.

Education (Scotland) Bill [H.C.].
Reported without Amendment. [3rd February.

HOUSE OF COMMONS.

Patents and Designs Bill [H.L.]
Reported with Amendments. [3rd February.
Restoration of Pre-War Trade Practices Bill [H.C.].
Read Second Time. [3rd February.
Securities (Validation) Bill [H.C.].
Read First Time. [28th January.
War Orphans Bill [H.C.]
Reported with an Amendment. [3rd February.

Special constables who are justices of the peace have been uncertain as to whether they should sit on the Bench, as most cases at local courts are brought by the police. Guidance has now been given by the Home Secretary, after consultation with the Lord Chancellor. Magistrates who are special constables are advised not to identify themselves with the decisions of their colleagues and not to sit on the Bench.